

City Council

Jose Esteves, Mayor

Carmen Montano, Vice Mayor

Garry Barbadillo, Councilmember

Debbie Indihar Giordano, Councilmember

Marsha Grilli, Councilmember



NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that a Special Meeting of the Milpitas City Council will be held at 6:00 P.M. on Monday, October 17, 2016 at Milpitas City Hall, 455 East Calaveras Boulevard., Milpitas, CA in City Council Chambers on the second floor. Agenda for the meeting is as follows:

SPECIAL MEETING AGENDA

MONDAY, OCTOBER 17, 2016

6:00 P.M.

Milpitas City Hall

City Council Chambers, 2nd Floor

455 East Calaveras Boulevard, Milpitas, CA 95035

I. CALL TO ORDER / ROLL CALL

II. PUBLIC FORUM

Comments limited to 3 minutes may be made on any subject not listed on the agenda.

III. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

IV. DISCUSSION

Receive Staff Report and Consider Adopting a Resolution to Approve and Authorize the City Manager to Execute an Agreement for Solid Waste Collection (Staff Contact: City Manager Tom Williams, 408-586-3051)

V. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in Council Chambers for all meetings.

SPECIAL MEETING – AGENDA REPORT

IV. Receive Staff Report and Adopt a Resolution to Approve and Authorize the City Manager to Execute an Agreement for Solid Waste Collection and Processing (Staff Contact: Tom Williams, 408-586-3051)

Background:

Council Direction at September 20th Meeting

At the September 20th Council meeting, staff brought a package that addressed substantially the same material that is included in this staff report, with an attached final draft agreement with Republic Services, Inc., and pricing for both Republic Services, Inc., and for Garden City Sanitation with processing at the City of Sunnyvale's SMaRT Station. Council directed staff to return to Council in October with final draft collection agreements and pricing with both Garden City Sanitation with processing at the City of Sunnyvale's SMaRT Station, and for Republic Services, Inc. Council took public comment on the item at the September 20th meeting, but did not formally hear the item.

Materials for October 17th Meeting

Since the September 20th Council meeting, staff has worked with Garden City Sanitation and the City of Sunnyvale, and with Republic Services towards presenting full final draft packages. Staff has substantially completed final draft pricing and an agreement with Garden City Sanitation. However, Milpitas' and Garden City's ability to execute the agreement is predicated on having a final draft arrangement with the City of Sunnyvale. As of the completion of this staff report, staff has not received necessary information from the City of Sunnyvale regarding pricing for use of the SMaRT Station or approval of proposed contractual terms as contained in a draft memorandum of understanding between the City of Milpitas and the City of Sunnyvale.

The attachments for this item thus include a final draft agreement with Republic Services, Inc., but not one with Garden City Sanitation. We understand that the City of Sunnyvale may be providing the necessary materials in the next few days, and if this is the case staff will make them available prior to or at the Council meeting. As noted above, the staff report provides substantially the same information to that contained in the September 20th staff report, including the best current information for Garden City Sanitation and the SMaRT Station, with minor revisions as noted below in italics.

RFP Process – Disposal and Collection

The City's contract for solid waste collection expires in September 2017. The City conducted a two part procurement process, separating disposal and collection contract award. In response to the City's Request for Proposals (RFP), two companies submitted disposal proposals (Green Waste Recovery and Waste Management, Inc.) and six companies submitted solid waste collection and materials processing proposals (California Waste Solutions, Garden City Sanitation, Green Team, GreenWaste Recovery, Republic Services, Inc., and Waste Management, Inc.). The Council in March 2016 awarded Waste Management, Inc the disposal contract. The high level of competition for the services has been demonstrated to be a direct result of separating the proposal process and contract award for the two services, resulting in substantial savings to ratepayers.

City Council Direction – Collection

At the May 23, 2016 Council study session, five of the six collection proposers presented their qualifications and approach for providing services to Milpitas. At the June 21, 2016 Council meeting, staff presented technical evaluation results and proposed costs. Council directed staff to conduct negotiations with each of the four lowest cost proposers (Garden City, Green Team, GreenWaste Recovery, and Republic Services, Inc.) and authorized the City Manager to discontinue negotiations with any of the proposers upon his determination that a viable contract could not be agreed-upon. The table below presents the proposed costs and evaluation ranking for each company's base and alternate proposals at the time of the June 21, 2016 City Council meeting.

<i>Proposer</i>	<i>Evaluation Ranking</i>	<i>Proposed Compensation*</i>
GreenWaste Recovery Base	85.3	\$12,904,762
GreenWaste Recovery Alternate	83.3	\$12,904,762
Republic Services Base	82.3	\$10,146,255
Republic Services Alternate	79.0	\$10,074,442
GreenTeam Base	66.7	\$13,610,324
Garden City Alternate	64.7	\$12,543,179
Garden City Base	62.7	\$13,264,543
GreenTeam Alternate	62.0	\$13,558,427

*These values do not include the cost of disposal or city fees.

Determination of Viable Proposals

The City Manager provided oversight of, and participated in the negotiations. As the negotiations with the proposers progressed, it became clear that it was not possible to negotiate viable franchise agreements with Green Team and GreenWaste Recovery. The business terms required by Green Team created an unacceptable level of cost and contractual risk to the City and to ratepayers. The cost proposal, subscription level commitments, and resulting customer rates required by GreenWaste Recovery resulted in significantly higher rate impacts (a rate increase of more than 30%) than the other remaining proposers, despite several cost reduction strategies that were discussed in the negotiations.

Recommended Contract Terms and Service Package

Through negotiations with the two remaining proposers, the following key business and service terms were determined to reflect Council direction and to be in the best interests of the City's ratepayers:

- **Contract Term:** 10 Years if Republic Services, Inc., is selected; 15 years if Garden City is selected (Garden City's proposal provided a \$370K/year savings for a 15 vs. a 10 year term vs. Republic's proposal that offered less than \$12K/year savings) *[While we anticipate that the savings noted here for the Garden City proposal would remain substantially in effect, that is not certain pending review of the City of Sunnyvale materials.]*
- **Rate Adjustment Process:** No change from RFP; Annual CPI-based adjustments capped at 5% per year with detailed cost-of-service reviews for years 4 and 8, again with a 5% cap. In the event that calculated adjustments exceed the 5% cap, Contractor must present justification to City Council. *[Garden City's draft agreement now allows for a Year 3 review of debris box revenues should revenue targets not be met, and substitutes a Year 7 detailed cost of service review for that of Year 8. In both cases it is staff's belief that these changes provide a fair distribution of risk reflecting Garden City's present understanding of services in Milpitas as a non-incumbent.]*
- **Billing Services:**
 - Selected contractor will assume responsibility for all customer billings
 - City Hall payment drop-off will be retained for one to two years after transition; contractor will establish local payment locations after that
 - Elimination of several historic City charges (billing services, street sweeping fee, bus stop service, administrative costs, etc.)
- **Temporary Roll-off Services:** Phase out current non-exclusive system; include services in the franchise.
 - The current system carries a high level of administrative burden. For this reason, in the Bay Area such non-exclusive systems are generally only used by larger cities, such as San Jose and Oakland.
 - The San Jose and Oakland systems are both available to participants in Milpitas' non-exclusive system, and many of them are now authorized to provide these services in those cities.
- **Standard Service Level and Variable Rate Options:**
 - Single-Family Customers: 32, 64, and 96-gallon contractor-provided carts
 - Multi-Family Customers: 32, 64, and 96-gallon carts; 1 through 8 yard bins; compactors
 - Commercial Customers: 32, 64, and 96-gallon carts; 1 through 8 yard bins; compactors
 - Roll-off/Compactor Customers: 10, 20, 30, and 40 yard boxes; various compactors

- **New/Improved Services for Legislative/Regulatory Compliance:**
 - Residential Food Scraps Program starting immediately with new contract (SB 1383)
 - Commercial and Multi-Family Recycling (AB 341) at 25% of equivalent garbage rate
 - Commercial and Multi-Family Organics (AB 1826) at 80% of equivalent garbage rate
 - Special Event Recycling Services (AB 2176) at no charge to City or event organizer
 - Significant expansion of public education and outreach (AB 341, AB 1826)
 - Significant expansion of reporting (AB 341, AB 1826)
- **New/Improved Services for Customer Convenience:**
 - New On-Call Curbside Bulky Item/Refuse Collection (four per year at no charge)
 - Enhanced Used Motor Oil/Filter Curbside Collection & Recycling (no additional charge)
 - New Used Cooking Oil Curbside Collection & Recycling (no additional charge)
 - New On-Demand Extra Material Setouts (fee for service)
- **Solid Waste Processing:** The proposed contract reserves the City's right to implement solid waste processing at a later date at a specified cost, depending on the City's remaining regulatory demands after implementation of recycling/organics programs noted above. This processing is expensive, regardless of the selected contractor, and may not be necessary for several years.

Public Input Supports Selected Service Package

As reported at the June 21, 2016 Council meeting, staff conducted a comprehensive survey (attached) of services with more nearly 900 respondents reflecting the ethnic composition of Milpitas. The results are attached and generally support the proposed service package.

- 83% of Respondents support converting from customer-owned cans to contractor-provided carts
- 53% of respondents support add residential foods scraps, if there is no rate impact
- 69% of respondents support replacing dump days with on-call pick ups

The proposed service package also largely reflects the input of the Recycling and Source Reduction Advisory Commission.

Comparison of Costs and Rates for Negotiated Agreements

The following table shows the proposed Year 1 costs and estimated life-cycle cost of both agreements over a 15 year period. The figures here are estimates of future inflationary impacts on the cost of service to customers, based on the costs and cost categories proposed by each company as well as the past 15 year history of the inflationary indices used to adjust rates under the proposed agreement. Note that while a 15 year lifecycle was used for the purposes of this analysis, staff does not recommend awarding an agreement to Republic with a term longer than 10 years, for the reasons stated above. *[The table includes the same costs for Garden City as contained in the staff report for the September 20 Council meeting. Garden City's portion of the Garden City/Sunnyvale total costs remain substantially the same as in September. The total Garden City costs provide a point of comparison, and while we anticipate that information from the City of Sunnyvale will result in an overall decrease in Garden City's total costs the extent of any reduction is unknown pending review of those materials.]*

The Republic Services cost is about \$7,000 higher than that presented in the staff report for the September 20 Council meeting, and represents very minor adjustments made in consultation with staff and the City's consultant. The resulting dollar and percentage variances over a 15 year period are substantially the same as those presented in the September 20 Council staff report.]

	Lifecycle Contract Value	2018
		Year 1
Garden City	\$265,619,907	\$15,059,272
Republic	\$247,168,027	\$13,937,131
Variance	\$18,451,880	\$1,122,141
	7.5%	8.1%

Note: These values include all collection and disposal costs incurred by Contractor

In general, the rates proposed by Republic represent a 7.0% REDUCTION relative to the current rates, while Garden City's proposal represents a 7.2% INCREASE in rates. The rate comparison table below illustrates several of the most common service levels in use by Milpitas customers. Several minor structural changes are being made to other rate categories, including: reducing the cost of Multi-Family and Commercial Organics service (historically more expensive than commercial garbage service); adding a small charge for Multi-Family and Commercial Recycling service (equivalent to 25% of the same service level of Garbage); and converting the current confusing roll-off rate structure with a more equitable and easy-to-understand system. *[For Republic Services, Inc., the rate reduction presented in the September 20th Council report was 7.2% rather than 7.0%. The rates as shown below for Republic are substantially the same as those presented in the September 20th Council report, with very minor differences. For instance the new 32 gallon rate of \$31.51 was \$31.46 in the September 20th Council report.]*

		Current	Republic		Garden City	
		\$	\$	%	\$	%
Residential	32-Gallon	\$ 33.89	\$ 31.51	-7.0%	\$ 36.34	7.2%
	64-Gallon		\$ 37.06	9.3%	\$ 42.73	26.1%
	96-Gallon		\$ 42.57	25.6%	\$ 49.09	44.8%
Multi-Family	96-Gallon	\$ 31.80	\$ 29.57	-7.0%	\$ 34.09	7.2%
	1CY 1x/wk	\$ 98.06	\$ 91.17	-7.0%	\$ 105.14	7.2%
	1CY 3x/wk	\$ 203.28	\$ 189.00	-7.0%	\$ 217.95	7.2%
	3CY 1x/wk	\$ 205.53	\$ 191.10	-7.0%	\$ 220.36	7.2%
	3CY 3x/wk	\$ 507.76	\$ 472.10	-7.0%	\$ 544.40	7.2%
	4CY 1x/wk	\$ 238.10	\$ 221.38	-7.0%	\$ 255.28	7.2%
	8CY 1x/wk	\$ 412.52	\$ 383.57	-7.0%	\$ 442.31	7.2%
Commercial	96-Gallon	\$ 36.80	\$ 34.22	-7.0%	\$ 39.46	7.2%
	1CY 1x/wk	\$ 111.36	\$ 103.54	-7.0%	\$ 119.40	7.2%
	1CY 3x/wk	\$ 250.13	\$ 232.56	-7.0%	\$ 268.18	7.2%
	3CY 1x/wk	\$ 237.41	\$ 220.74	-7.0%	\$ 254.54	7.2%
	3CY 3x/wk	\$ 631.92	\$ 587.54	-7.0%	\$ 677.52	7.2%
	4CY 1x/wk	\$ 277.67	\$ 258.17	-7.0%	\$ 297.71	7.2%
	8CY 1x/wk	\$ 485.99	\$ 451.86	-7.0%	\$ 521.06	7.2%
MSW R/O* (Base Charge)	10 Yards	\$ 512.09	\$ 390.56	-23.7%	\$ 463.49	-9.5%
	20 Yards	\$ 725.49	\$ 546.20	-24.7%	\$ 649.51	-10.5%
	30 Yards	\$ 922.69	\$ 686.77	-25.6%	\$ 818.16	-11.3%
	40 Yards	\$ 1,131.63	\$ 838.25	-25.9%	\$ 999.40	-11.7%

* Current rate includes disposal cost. Proposed rates include service cost only, Customer will also pay for tonnage at \$42.78/ton.

Among the drivers of the cost and rate differences between the companies are their material handling costs and desired profit levels. The per ton costs for handling recycling, yard trimmings, food scraps, construction and demolition debris, and mixed waste are provided in the table below along with each company's desired profit level. *[The per-ton costs show*

below for Garden City are the same as presented in the September 20th Council report and represent the City of Sunnyvale's current per-ton costs for processing of materials. These are the costs now under review by the City of Sunnyvale.]

	Garden City	Republic
Recycling	\$ 60.77	\$ -
Yard Trims	\$ 62.34	\$ 59.75
Food Scraps	\$ 92.00	\$ 70.00
C&D	\$ 87.50	\$ 66.50
Mixed Matls	\$ 124.45	\$ 115.00
Profit	13.0%	10.5%

Ratepayer Protections & Contract Management Tools

The agreement, regardless of the selected contractor, provides ratepayers and the City the following protections and tools:

1. Rate adjustments are capped and limited in scope. The contractor will not be compensated for faulty operating assumptions.
2. An objective rate adjustment process that prevents manipulations of future rate increases while fairly compensating the contractor.
3. Guaranteed availability of programs and facility capacity to meet all current and anticipated State regulatory requirements for diversion and removal of organics from disposal.
4. City may conduct independent performance reviews, paid for by contractor.
5. City may at its sole discretion require contractor enter into a one (1) year extension of the Agreement without changes to its material provisions. This is an important protection during the process of selecting the next contractor; one the City's current agreement does not afford.
6. A clear, City-controlled process for making "changes in scope" and responding to "changes in law".
7. Objective performance standards for all key areas of service, coupled with pre-defined penalties for failures in compliance.
8. Significant increase in reporting and City's audit rights over all aspects of the contractor's operations in the City.

Franchise Agreement with Garden City

Pending receipt and review of materials from the City of Sunnyvale, the benefits of the Garden City proposal remain the same as presented in the September 20th Council report:

1. Participation in a publicly-owned, highly transparent, facility (the SMaRT Station) for handling the materials collected in Milpitas.
2. Direct attention to the Milpitas contract by company ownership and significantly higher levels of management and supervisory oversight – likely resulting in higher service quality.
3. Working with a company who is primarily focused on diverting materials from landfill, consistent with the direction of the state legislature and CalRecycle.
4. No longer delivering any materials to Newby Island for processing.

Franchise Agreement with Republic

If City Council awards the franchise agreement to Republic Services, Inc., the following general benefits exist:

1. A rate reduction of 7.0 percent compared to current solid waste rates, effective September 2017 – December 2018. Rates will not be adjusted again until January 1, 2019.
2. Commitment to increase the initial amount of diversion by a minimum of 25 percent by the 4th year of the agreement.
3. Eliminates many risks that can result from transition service with another contractor.

An award to Republic Services, Inc. also provides the following benefits related to the Newby Island facility that complement and strengthen the provisions of the class action lawsuit settlement.

1. Commitment to convert from open windrow composting of organic materials to use of “aerated static piles technology” (ASP) at the Newby Island facility by December 31, 2017. Use of the ASP technology will minimize odors.
2. If the ASP process is not fully operational by December 31, 2017, Contractor shall send Milpitas’ organic material for processing at another facility, at no added cost to City and until such time as the ASP process is demonstrated to be fully operational.
3. Commitment to reduce total composting area by a minimum of one-third.
4. Commitment to reduce the total volume of organic materials composted at the Newby Island facility from current levels of about 160,000 tons per year to 100,000 tons per year.
5. Failure to satisfy the requirements of Items 2 through 5 results in:
 - a. A \$1,000/day penalty for each day of noncompliance.
 - b. Termination of the agreement at City sole discretion, with Republic payment of actual City cost or \$425,000, whichever is less, should the City need to conduct a process to select a successor contractor.

The above provisions apply to both yard trimmings and food scraps; the latter being of greater relative odor concern.

City staff remain concerned about entering in to a new long-term agreement with Republic Services, Inc., given the history of legal conflict between the parties. If City Council awards the franchise agreement to Republic Services, Inc., City staff intend to work closely with Republic Services, Inc., during the transition to improve the relationship and will significantly increase oversight and management of the agreement and relationship. The new franchise agreement provides a number of contract management tools that the City did not previously have.

Recommended Contractor:

At the time of posting, staff is awaiting final contract language and pricing responses from the City of Sunnyvale that are necessary to fully understand the cost and contractual requirements of agreements with Garden City and Sunnyvale.

Should the Council wish to act tonight, staff recommends that Council direct staff to finalize an agreement with Republic Services, Inc. with a term of ten years, that is substantially the same as that attached, and at the total initial cost presented above. Staff further recommends that Council direct staff to report back to Council with a summary of the final agreement, pricing and rates.

California Environmental Quality Act (CEQA): As stated in the attached memo “Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios”:

“...even when considering the emissions impact associated with the worst case scenario for the City-approved waste disposal contract (disposal project) in conjunction with the diversion project, the total emissions still fall well below the *criteria pollutant* thresholds. With respect to GHG emissions, recycling and composting provide lifecycle benefits that far outweigh the impacts from transporting and processing of both the landfilled materials and the materials diverted from landfill...the City of Milpitas’ new and proposed contractual arrangements for hauling, landfill disposal, and diversion of solid waste materials (the combined disposal and diversion projects considered herein) are exempt from CEQA per CEQA Guidelines section 15301, as the contracted activities represent the continued operation of existing public facilities that involve “negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

Alternative: The City’s current contract expires September 5, 2017. Award of an agreement is necessary to ensure continuity of service.

Fiscal Impact: None. The cost of solid waste collection will be included in the solid waste customer rates.

Attachments:

- A. City Council Resolution Authorizing City Manager to Execute Solid Waste Franchise Agreement with Republic Services
- B. Proposed Republic Services Franchise Agreement
- C. Results of Assessing Air Quality and Greenhouse Gas Emissions Impact of Solid Waste Diversion Scenarios
- D. Solid Waste Survey
- E. San Jose California Environmental Quality Act (CEQA) Letter of September 20, 2016 and City Response

Recommendations:

1. Receive staff report and recommendation.
2. Adopt a Resolution to approve and authorize the City Manager to award and execute the attached solid waste collection franchise agreement with Republic Services, Inc., subject to final review and incorporation of non-substantive changes by the City Manager and City Attorney

OR

Direct staff to return with a franchise agreement with Garden City Sanitation and final draft arrangements with Sunnyvale.